

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**

R3-4-233 Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107

Implementing statute: A.R.S. § 3-201.01
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Docket Opening: TBP
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Carlos Ramírez, Rules Analyst

Address: Arizona Department of Agriculture

1688 West Adams,

Phoenix, Arizona 85007

Telephone Number: (602) 542-0962

Fax Number: (602) 542-5420

E-mail: cramirez@azda.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rules:**

The Arizona Department of Agriculture is proposing to amend R3-4-233 to define breeder seed, to redefine "mosaic-indexed" to require laboratories that index lettuce seed for shipment to Arizona be certified by the agricultural department of the laboratory's state of origin or by the Department, as provided by A.R.S. § 3-145, or be accredited by the National Seed Health System; and to broaden the are under quarantine to include territories of the United States. The proposed rulemaking also

exempts breeder seed from the permitting process and broadens the permit section to allow a person to ship unindexed lettuce seed to Arizona to be mosaic-indexed.

- 6. A reference to any study relevant to the rules that the agency reviewed and either relied on in its evaluation of or justification for the rules or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

- 8. The summary of the economic, small business, and consumer impact:**

The proposed rulemaking requires laboratories that index lettuce seed for commercial propagation in Arizona to apply for certification from the agricultural department of their state of origin or the Department's state agricultural laboratory, or to apply for accreditation through the National Seed Health System. Fees prescribed in R3-5-104 are \$200 for initial certification and \$100 for certification renewal. Under R3-5-111, initial certification is valid for 12 months. Fees that other states may charge to certify a laboratory are unknown. There are no fees associated with the National Seed Health System.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Carlos Ramírez, Rules Analyst

Address: Arizona Department of Agriculture

1688 West Adams

Phoenix, Arizona 85007

Telephone Number: (602) 542-0962

Fax Number: (602) 542-5420

E-mail: cramirez@azda.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the Rules Analyst listed in item #4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. thirty days after the notice is published in the *Arizona Administrative Register*.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-233. Lettuce Mosaic Virus

ARTICLE 2. QUARANTINE

R3-2-233. Lettuce Mosaic Virus

A. Definitions. In addition to the definitions provided in ~~R3-4-201~~ R3-4-101, the following terms apply to this Section:

1. ~~"Integrity" means the planting location is free from the pest.~~ "Breeder seed" means unindexed lettuce seed that a lettuce breeder or researcher controls, and that is not available for commercial sale or propagation.
2. "Breeder trial" means breeder seed grown to develop a new variety of lettuce. A person may conduct multiple breeder trials in Arizona under the provisions of subsection (E).
- ~~2~~ 3. "Mosaic-indexed" means lettuce seed that has been tested by a laboratory approved by a state in which the laboratory is located. The testing sample shall contain at least 30,000 seeds, and no seeds shall be found infected with the pest. that a laboratory tested at least 30,000 lettuce seeds from a seed lot and found that all sampled seeds were determined to be free from lettuce mosaic virus. Laboratories that index lettuce seed that is shipped to Arizona shall be certified by the agricultural department of the laboratory's state of origin or by the Arizona Department of Agriculture, in accordance with A.R.S. § 3-145, or shall be accredited by the National Seed Health System. Laboratories shall provide a copy of their certificate or accreditation letter to the Arizona Department of Agriculture by January 1 of the year that shipping will take place.
- ~~3~~ 4. "Pest" means the virus, lettuce mosaic- virus.
5. "Unindexed lettuce seed" means lettuce seed that is not mosaic-indexed.

B. Area Under Quarantine: All states, ~~and~~ and districts, and territories of the United States

C. Regulated Commodities ~~Covered~~: Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.

D. Restrictions.

1. ~~Any lettuce seed imported into, transported within, planted, or sold in Arizona shall be mosaic-indexed unless authorized by a permit established in subsection (F). A person shall not import into, transport within, plant, or sell unindexed lettuce seed in Arizona unless the unindexed seed is exempted under subsection (E) or the person obtains a permit as prescribed in subsection (F).~~

2. Each container or subcontainer of mosaic-indexed seed shall bear a label with the statement “Zero infected seeds per 30,000 tested (0 in 30,000).” ~~or shall be accompanied by an official certificate from the state of origin attesting that the seed is mosaic indexed.~~
3. ~~Lettuce transplants imported into, transported within, planted, or sold in Arizona shall be accompanied by an official certificate from the origin state that includes: A person shall not import into, transport within, plant, or sell lettuce transplants in Arizona unless the transplants are exempted under subsection (E), or unless an original certificate, issued by the origin state of origin, accompanies the shipment. The certificate shall declare: provide the following information about the transplants in the shipment:~~
 - a. The name of the exporter,
 - b. The variety name and lot number of the seed from which the transplants were grown, and
 - c. Verification that the seeds from which the transplants were grown ~~meet the requirement in subsection (E)(1)~~ were mosaic-indexed.
4. A grower shall disk, or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or circumstances beyond the control of the grower.

E. Exemptions. The requirements of subsection (D) do not apply to:

1. Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting,
2. ~~Any~~ Shipments of lettuce transplants consisting of five flats or less per receiver for noncommercial planting,
3. Breeder trials for a plot of 1/20 of an acre or less, or
4. Breeder trials provided:
 - a. Each trial is for a plot of at least 1/20 of an acre and no more than 1.25 acres,
 - b. The breeder or researcher:
 - i. Places a flag, marked with a trial identification number, at each corner of a breeder trial plot.
 - ii. Provides the following written information to the Department within ten business days of planting breeder seed:

- (a) GPS coordinates for each breeder trial plot using NAD 83 decimal degrees.
- (b) A detailed map showing the location of each breeder trial plot.
- (c) An identification number for each breeder trial plot.
- (d) The name, address, telephone number, and email address for the breeder or researcher.
- iii. Monitors the lettuce for pest symptoms, and notifies the Department, by telephone, by the end of the first business day following the detection of pest symptoms.
- iv. Removes all plants exhibiting pest symptoms of lettuce mosaic virus, and transports the plants to a landfill in sealed containers are removed from the breeder trial plot, destroyed, and placed in a sealed container for disposal in a landfill.
- v. Labels bills of lading or invoices accompanying breeder seed into Arizona with the statement "LETTUCE SEED FOR BREEDER TRAILS ONLY."
- vi. Destroys lettuce plants remaining in a field within 10 days after the ~~upon~~ completion of breeding trials, as required by subsection (D)(4).

~~E~~ F. Permits.

~~1. A lettuce breeder or researcher may apply for a permit for lettuce seed or transplants that have not been mosaic indexed, provided:~~

- ~~a. Each permit is for a 1/20 acre plot or less,~~
- ~~b. The applicant monitors the lettuce for pest symptoms,~~
- ~~c. The applicant verifies the integrity of the fields,~~
- ~~d. All plants exhibiting pest symptoms are destroyed, and~~
- ~~e. The following statement appears on the bill of lading or invoice accompanying each shipment:~~

~~"This shipment meets Arizona lettuce mosaic permit requirements. Permit number _____."~~

~~2. A seed dealer may apply for a permit to import non-mosaic indexed lettuce seed for temporary storage in Arizona, provided:~~

- ~~a. Non-mosaic indexed lettuce seed is shipped out of state and not distributed for use in Arizona;~~

- ~~b. The seed dealer maintains and makes available for Department inspection during regular business hours an inventory record on all non-mosaic indexed lettuce seed which includes:~~
 - ~~i. The quantity and lot number of non-mosaic indexed lettuce seed,~~
 - ~~ii. The date and lot number of non-mosaic indexed lettuce seed received by the seed dealer,~~
 - ~~iii. The date and lot number of non-mosaic indexed lettuce seed shipped out of state by the seed dealer, and~~
 - ~~iv. The destination of each shipment.~~
- ~~c. The permit does not preclude inspection of non-mosaic indexed lettuce seed upon entering Arizona.~~
- 1. A person may apply for a permit to import unindexed lettuce seed for temporary storage in Arizona if the person:
 - a. Maintains the identity of the seed while in Arizona.
 - b. Does not sell or distribute the seed for use in the state.
 - c. Does not transfer the seed to any other facility in the state.
 - d. Reships the seed from the state within seven days.
- 2. A person may apply for a permit to transport unindexed lettuce seed into Arizona to be mosaic-indexed.

~~F G. A grower shall disk, or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or documented circumstances beyond the control of the grower, or in the case of a permittee breeder seed trials, as soon as the purpose of the crop is completed.~~

~~G~~ H. Disposition of Violation.

- 1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.
- 2. Any ~~untested~~ shipment of unindexed lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately sent out-of-state or destroyed at the option of the

owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.

3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.
4. Violation of any provision of ~~the~~ a permit issued under subsection (F) may result in suspension or revocation of the permit.